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EXAMINER

EVANISKO, GEORGE ROBERT

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/587,318
Filing Date: June 05, 2000
Appellant(s): PANDELISEV, KIRIL A.

James C. Wray
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/8/04.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-4, 26, 39, 84, and 87-105 as being anticipated by Ostrow stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 1-3, 26, 32, 84, 87, and 89-105 as being anticipated by Browner stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

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The rejection of claims s 1-6, 16, 22-25, 27-34, 36, 38, 39, 84, and 87-105 as being anticipated by Russek stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 5, 6, 34, 36, and 85 as being anticipated by Ostrow stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 5, 6, 34, 36, and 85 as being obvious over Ostrow stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 7-15, 38, and 40 as being obvious over Ostrow in view of McLeod stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 16, 22-25, 27-34, and 36 as being obvious over Ostrow in view of Russek stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 17-21 as being obvious over Ostrow in view of Russek and further in view of McLeod stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

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The rejection of claims 35, 37, and 41 as being obvious over Ostrow stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 35, 37, and 41 as being obvious over Ostrow in view of Russek stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 35, 37, and 41 as being obvious over Ostrow in view of McLeod stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,344,384	Ostrow et al	9-1994
3,025,857	Browner	3-1962
4,381,012	Russek	4-1983
5,518,496	McLeod et al	5-1996

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 26, 39, 84, and 87-105 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrow et al (5344384). Ostrow describes and shows two individual controls/generators for the EM cells in figure 6 and an individual generator/control for the electrostimulation pads in figure 11, mounted in a console, 24, that is mounted on one base

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wrapped around the waist (figure 1) and remote from the other bases. In addition, it is inherent that the system contain some sort of controls, such as software or hardware controls (the computerized chip, column 4), to provide the pulses to the EM or electrostimulation cells since the batteries alone could not provide the pulses to the cells.

For claim 1, Ostrow shows:

base, 22;

a plurality of cells, 32/42, 64 and 65, (with a cell being a small, bounded space);

a power supply individually communicating independently with each of the cells, Figure 11, numeral 46, communicating independently through generator 48 or generators 48 and 50;

and controls connected to the cells separately controlling application of power to each of the cells individually, generators 48 and 50, and column 4, lines 36-50 and 61-64.

It is noted the claim is a comprising claim and does not preclude the use of extra cells used with the claimed controls.

For claim 2, Ostrow shows the claimed thin, flexible, portable base in figure 1 and column 3, line 42, and column 2, line 31.

For claim 3, Ostrow teaches the claimed magnetic field and current voltage signals in figure 11.

For claim 4, Ostrow teaches the claimed batteries in column 4, lines 32-36.

For claim 26, Ostrow teaches the claimed orthogonal arrangement in figures 1-3.

For claim 39, Ostrow teaches the claimed base encircling the body in figure 1.

For claim 84, Ostrow teaches the cells concurrently or sequentially generate magnetic and voltage signals in column 5, lines 37-39.

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For claim 87, Ostrow teaches the flexible base, column 3, lines 39-45, plural individually controlled applicator cells, 32/42, 64 and 65, an energy generator connected to the cells, column 4, lines 32-36, and controls, 48 and 50.

For claim 88, Ostrow teaches the plural energy generators in column 4, lines 32-36.

For claims 89-101, Ostrow teaches the use of controls to independently control different pulse parameters, such as shape, amplitude, frequency, with elements 48 and 50 and computerized chip (column 4, line 44) and inherently controls each of the pulse parameters since each of the stimulation pulses delivered to the patient contains those specific pulse parameters.

For claim 102, Ostrow teaches the carrier, 22, cells, 32/42, 64 and 65, power source, column 4, lines 33-42, and controls, 48 and 50.

For claim 103, Ostrow teaches the cells arranged in several arrays in figure 1, and controls providing power concurrently or individually, in figure 11.

For claim 104, Ostrow teaches the controls connected for providing power concurrently or individually in figure 11.

For claim 105, Ostrow teaches a remote control, 24 in figure 1, located on the waist of the person, remote from applicators 22 located on the arm and leg.

Claims 1-3, 26, 32, 84, 87, and 89-105 are rejected under 35 U.S.C. 102(b) as being anticipated by Browner (3025857). Browner is capable of meeting the functional use recitations presented in the claims. In addition, for claims 89-101, the controls inherently provide control of the pulse characteristics, such as pulse shape, width, frequency modulation, etc, since the pulses inherently have these properties.

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For claim 1, Browner shows:

base, 12;

a plurality of cells, 1-10, (with a cell being a small, bounded space);

a power supply individually communicating independently with each of the cells, Figures 4 and 5, numeral 30, communicating independently through lines 33 and controls 32;

and controls connected to the cells separately controlling application of power to each of the cells individually, 32, column 3, line 27.

It is noted the claim is a comprising claim and does not preclude the use of extra cells used with the claimed controls.

For claim 2, Browner shows the claimed thin, flexible, portable base, 12, in figure 3 and column 3, line 30.

For claim 3, Browner teaches the claimed current voltage signals in column 3, lines 10-27.

For claim 26, Browner teaches the claimed orthogonal arrangement in figure 1.

For claim 32, Browner teaches the claimed base control panel containing controls mounted to one end of the base in figure 1.

For claim 84, Browner teaches the cells concurrently or sequentially generate voltage signals in column 3, lines 10-27.

For claim 87, Ostrow teaches the flexible base, 12, plural individually controlled applicator cells, 1-10, an energy generator connected to the cells, 30, and controls, 32.

For claims 89-101, Browner teaches the use of controls to independently control different pulse parameters, such as shape, amplitude, frequency, with elements 32, and inherently controls

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each of the pulse parameters since each of the stimulation pulses delivered to the patient contains those specific pulse parameters.

For claim 102, Browner teaches the carrier, 12, cells, 1-10, power source, 30, and controls, 32.

For claim 103, Browner teaches the cells arranged in several arrays in figure 1, and controls providing power concurrently or individually, in column 3, lines 10-27.

For claim 104, Browner teaches the controls connected for providing power concurrently or individually in column 3, lines 10-27.

For claim 105, Browner teaches a remote control, 30 and 32 in figure 5, located away from the person.

Claims 1-6, 16, 22-25, 27-34, 36, 38, 39, 84, and 87-105 are rejected under 35 U.S.C. 102(b) as being anticipated by Russek (4381012). Russek is capable of meeting the functional use recitations presented in the claims. In addition, Russek states in columns 4 and 6 that "dual" channel devices/controls can be used and therefore will provide the independent controls. In addition, the controls inherently provide control of the pulse characteristics.

For claim 1, Russek shows:

base, 1;

a plurality of cells, locations I-VI, with electrodes 14 in figure 1, (with a cell being a small, bounded space);

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a power supply individually communicating independently with each of the cells, column 6, lines 27-31, communicating independently through generator 70 with dual independent channels, column 4, line 46, and column 6, lines 15-24;

and controls connected to the cells separately controlling application of power to each of the cells individually, generator 70 containing dual channels, column 4, line 46 and column 6, lines 15-24.

It is noted the claim is a comprising claim and does not preclude the use of extra cells or electrodes used with the claimed controls.

For claim 2, Russek shows the claimed thin, flexible, portable base in figure 1 as element 1 and figures 14-17

For claim 3, Russek teaches the claimed current voltage signals in column 6, lines 5-50.

For claim 4, Russek teaches the claimed batteries in column 6, line 28.

For claim 5, Russek teaches the power source mounted on the base in figure 12.

For claim 6, Russek teaches the power source connected to the base in figure 12.

For claim 16, Russek teaches the remote controls connected to the controls for remote control in figure 13.

For claim 22, Russek teaches the use of cables, 11-13, connected to electrodes, 14, insulation, around the cables or 22, and cable enclosure, 23, 24, 40, 44.

For claim 23, Russek teaches power cables, 11-13.

For claim 24, Russek teaches signal cables, 11-13.

For claim 25, Russek teaches an on/off switch, 79.

For claim 27, Russek teaches control conduits mounted on the base, 6, 44.

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For claim 28, Russek teaches control conduits connected to power and signal generator in figure 4, with the connection being through the cables 11-13.

For claim 29, Russek teaches the power and generator being portable in figures 12-17.

For claim 30, Russek teaches the control conduits being power conduits using cables 11-13 since they provide the control signal and power signal to the electrodes.

For claim 31, Russek teaches the control conduits being signal conduits, cables 11-13, since they provide the control signal and stimulation signal to the electrodes.

For claim 32, Russek teaches the control panel connected to controls and mounted to one end of the base in figure 12.

For claim 33, Russek teaches the control panel mounted on an opposite end of the base in figure 12.

For claim 34, Russek teaches the power supply comprising a battery power supply mounted on one end of the base in figure 12 and column 6, line 28.

For claim 36, Russek teaches a signal generator and control mounted on one end of the base in figure 12.

For claim 38, Russek teaches the frequency and field strength being variable, in column 6, lines 20-27.

For claim 39, Russek teaches the base encircling the body in figures 14-18.

For claim 84, Russek teaches the cells concurrently or sequentially generate magnetic and voltage signals in column 6, lines 5-52.

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For claim 87, Russek teaches the flexible base, 1, plural individually controlled applicator cells, I-VI and electrode 14, an energy generator connected to the cells, column 6, lines 28-31, and controls, column 6, lines 20-52.

For claim 88, Russek teaches the plural energy generators in column 6, lines 28-31.

For claims 89-101, Russek teaches the use of controls to independently control different pulse parameters, such as shape, amplitude, frequency, with control knobs listed in column 6, lines 20-52 and inherently controls each of the pulse parameters since each of the stimulation pulses delivered to the patient contains those specific pulse parameters.

For claim 102, Russek teaches the carrier, 1, cells, I-VI and 14, power source, column 6, lines 28-31, and controls, column 6, lines 20-52.

For claim 103, Russek teaches the cells arranged in several arrays in figures 1, 7, 12, 13, and controls providing power concurrently or individually, in column 6, lines 5-52.

For claim 104, Russek teaches the controls connected for providing power concurrently or individually in column 6, lines 50-52.

For claim 104, Russek teaches a remote control, 82 in figure 13, that can be located remote from the person.

Claims 5, 6, 34, 36, and 85 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ostrow et al (5344384). Ostrow shows in figure 1 the console/power source, 24, mounted and connected to the base on one end of the base. In addition, for claim 85, it is inherent that the type, frequency, pulse, etc. of the energy is varied according to the size and type of wounded tissue and proximity of the cell to the wounded

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tissue, since the device is meant to heal the wounded tissue and therefore the pulses will be varied to the type of wound. Ostrow discloses in the abstract and column 1, line 3, and column 2, lines 1, 2, 10 and 11, the use of his device for therapeutic treatment, atrophy, bone healing, and treatment of injuries to soft and hard tissue.

In the alternative, Ostrow discloses the claimed invention except for the power source mounted or connected to the base (one end of the base) and varying the type, frequency, pulse characteristics, etc of the energy according to the size and type of wounded tissue and proximity of the cell to the wounded tissue. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the therapy device as taught by Ostrow, with the power source mounted or connected to the base and varying the type, frequency, pulse characteristics, etc of the energy according to the size and type of wounded tissue and proximity of the cell to the wounded tissue since it was known in the art that therapy devices mount or connect the power source to the base to provide a single therapy system that allows the patient to conveniently and easily carry the therapy unit and power source in one unit and/or to prevent signal/power cords from becoming entangled and since it was known in the art that therapy devices vary the type, frequency, pulse characteristics, etc of the energy according to the size and type of wounded tissue and proximity of the cell to the wounded tissue in order to provide an effective therapy that heals the wound and neither causes further damage to the wound or not enough energy to heal the wound.

Claims 7-15, 38, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow et al in view of McLeod et al (5518496).

Ostrow discloses the claimed invention having the controls, 48 and 50 along with computerize chip (column 4, line 44), connected to the batteries (column 4, lines 33-36), a field generator coil, 42, coil enclosure and insulation, 28, except for the self contained controls in each cell and having shielding between control circuits and the sensors in the base with the frequency and field strength being variable with increasing frequencies in proximity to the wounds to be treated. McLeod teaches that it is known to use self contained controls, 160/162 in figure 2, in each cell connected to the battery, 148, cables connected to the control circuit, 154, 156, 158 and it is inherent that the system contain cables to provide the signal to the coil, a field generator coil, 142, shielding between components, 138, a coil enclosure/housing, 132, and insulation, latex in column 9, line 9, to provide a lightweight, mobile therapy system that does not restrict patient movement and to provide sensors, 146, for each cell to vary the therapy based on the output signal with the frequency and field strength being variable with increasing frequencies in proximity to the wounds to be treated to provide the appropriate and correct therapy. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the therapy device as taught by Ostrow, with the self contained controls in each cell connected to the battery, cables connected to the control circuit, a field generator coil, shielding between components, a coil enclosure/housing and insulation and the sensors for each cell with the frequency and field strength being variable with increasing frequencies in proximity to the wounds to be treated as taught by McLeod, since such a modification would provide a therapy device with self contained controls connected to the battery, cables connected to the control circuit, a field generator coil, shielding between components, a coil enclosure/housing and insulation to provide a lightweight, mobile therapy system that does not restrict patient

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movement, and since such a modification would provide a therapy device with sensors for each cell to vary the therapy based on the output signal with the frequency and field strength being variable with increasing frequencies in proximity to the wounds to be treated to provide the appropriate and correct therapy.

Claims 16, 22-25, 27-34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow et al in view of Russek (4381012).

Ostrow discloses the claimed invention except for control conduits mounted on the base/cell to carry power and/or signal cables and an on/off switch connected to the cables, the controls mounted on one or both ends of the base, and remote controls connected to the controls. Russek teaches that it is known to provide control conduits mounted on the base/cell to carry power and/or signal cables (figures 5-12) to provide a therapy base that prevents the power and/or signal cables/wires from becoming entangled with the patient or other elements of the system and to provide the controls mounted on one or both ends of the base to provide a self contained unit that is easy to operate without control wires becoming entangled and teaches that it is known to provide remote controls (on/off, figure 13) connected to the controls for controlling the cells remotely to allow more convenient control by a patient who has limited movement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the therapy device as taught by Ostrow, with control conduits mounted on the base/cell to carry power and/or signal cables, the controls mounted on one or both ends of the base, and the remote controls (on/off) connected to the controls as taught by Russek, since such a modification would provide a therapy device with control conduits mounted on the base/cell to carry power

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and/or signal cables to provide a therapy base/cell that prevents the wires from becoming entangled with patient or other elements of the system, since such a modification would provide a therapy device with controls mounted on one or both ends of the base to provide a self contained unit that is easy to operate without control wires becoming entangled, and since such a modification would provide remote controls (on/off) connected to the controls for controlling the cells remotely to allow more convenient control by a patient who has limited movement.

For claim 16, Russek teaches the remote controls connected to the controls for remote control in figure 13.

For claim 22, Russek teaches the use of cables, 11-13, connected to electrodes, 14, insulation, around the cables or 22, and cable enclosure, 23, 24, 40, 44.

For claim 23, Russek teaches power cables, 11-13.

For claim 24, Russek teaches signal cables, 11-13.

For claim 25, Russek teaches an on/off switch, 79.

For claim 27, Russek teaches control conduits mounted on the base, 6, 44.

For claim 28, Russek teaches control conduits connected to power and signal generator in figure 4, with the connection being through the cables 11-13.

For claim 29, Russek teaches the power and generator being portable in figures 12-17.

For claim 30, Russek teaches the control conduits being power conduits using cables 11-13 since they provide the control signal and power signal to the electrodes.

For claim 31, Russek teaches the control conduits being signal conduits, cables 11-13, since they provide the control signal and stimulation signal to the electrodes.

For claim 32, Russek teaches the control panel connected to controls and mounted to one end of the base in figure 12.

For claim 33, Russek teaches the control panel mounted on an opposite end of the base in figure 12.

For claim 34, Russek teaches the power supply comprising a battery power supply mounted on one end of the base in figure 12 and column 6, line 28.

For claim 36, Russek teaches a signal generator and control mounted on one end of the base in figure 12.

Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow in view of Russek as applied to claim 16 above, and further in view of McLeod et al.

Ostrow in view of Russek discloses the claimed invention with the cables being power and/or signal cables and an on/off switch connected to the cables, the cells having cables, field generator coils, insulation and coil enclosures except for the cell shielding. McLeod teaches that it is known to use shielding, 138, between components in each cell to prevent undesired interactions between components. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the therapy device as taught by Ostrow in view of Russek, with the shielding between components in each cell as taught by McLeod, since such a modification would provide a therapy device with shielding between components to prevent undesired interactions between components.

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Claims 35, 37, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow, Ostrow in view of Russek, or Ostrow in view of McLeod, respectively.

Ostrow, Ostrow in view of Russek, or Ostrow in view of McLeod discloses the claimed invention but does not disclose expressly the power supply comprising battery power supplies mounted on opposite ends of the base, the signal generator and control mounted transverse from the other signal generator and control on the opposite end of the base, and the sensors sensing multiple different parameters indicative of the wound to be treated. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the therapy device as taught by Ostrow or Ostrow in view of McLeod, with the power supply comprising power supplies and the sensors sensing different parameters since it was known in the art that therapy devices use a power supply comprising multiple power supplies to provide a redundant power system and/or to allow one device to operate when another device loses power and since it was known in the art that therapy devices use sensors sensing different parameters to provide a more accurate indication of the therapy being used and the wound being treated to provide feedback to the system to allow a more effective therapy to be delivered.

In addition, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the therapy device as taught by Ostrow or Ostrow in view of Russek with the power supply comprising battery power supplies mounted on opposite ends of the base and the signal generator and control mounted transverse from the other signal generator and control on the opposite end of the base, because Applicant has not disclosed that the power supply comprising battery power supplies mounted on opposite ends of the base and the signal generator and control mounted transverse from the other signal generator and control on the

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opposite end of the base provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the power supplies mounted on one end of the base and the signal generator and control mounted in the same plane as taught by Ostrow or Ostrow in view of Russek, because they provide an easy to use therapy device with controls and power supplies that are uncomplicated to use and service.

Therefore, it would have been an obvious matter of design choice to modify Ostrow or Ostrow in view of Russek to obtain the invention as specified in the claim(s).

(11) *Response to Argument*

Arguments directed to the 102 rejection in view of Ostrow.

The argument that the claimed elements are not in the prior art reference is not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

The argument that Ostrow does not suggest healing is not persuasive since Ostrow discloses in the abstract and column 1, line 3, and column 2, lines 1, 2, 10 and 11, the use of his device for therapeutic treatment, atrophy, bone healing, and treatment of injuries to soft and hard tissue.

The argument that Ostrow does not show controls connect to the cells separately controlling application of power is not persuasive since Ostrow shows in figure 11 controls 48 and 50 controlling power and signals separately to each cell.

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The argument that the Examiner is modifying Ostrow using the present invention as a guide merely to negate the claimed features and that such hindsight reconstruction cannot be a basis for anticipation is not a valid argument since a prior art reference that anticipates the claimed elements does not require reconstruction since the elements are already in the reference.

The argument that none of the references provide for controlled amplitude and frequency distribution or for combined signal delivery and treatment is not persuasive since claim 1 does not include this claim limitation and since none of the other claims contain a limitation directed to controlled amplitude “and” frequency. In addition, the controls inherently provide for controlled amplitude and/or frequency since the stimulation pulses inherently have those pulse characteristics.

The argument that no reference describes energy distribution over the wound area is not persuasive since claim 1 does not contain this limitation, since the wound area is not specified, and since the prior art meets the intended use limitations presented in the apparatus claims since it is used for therapy and/or applies a signal that is substantially equal to the applicants signal.

The argument that no reference covers multiple field treatment of a single wound, nor provides for flexible amplitude, frequency, and current distribution during a single wound treatment is not persuasive since claim 1 does not contain any of those limitations and since the prior art meets the “claimed” limitations.

The different arguments directed to the dependent/independent claimed elements not being located in the prior art references are not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

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Arguments directed to the 102 rejection in view of Browner.

The argument that the claimed elements are not in the prior art reference is not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

The argument that Browner does not suggest healing is not persuasive since Browner discloses in the title the use of the device for “electrotherapy” and since Browner is capable of meeting the intended use limitations of the claims since he provides a signal that causes electrical contraction of muscles.

The argument that Browner does not show controls connected to the cells separately controlling application of power is not persuasive since Browner shows in figure 4 controls 32 controlling power and signals separately to each cell.

The argument that the Examiner is modifying Browner using the present invention as a guide merely to negate the claimed features and that such hindsight reconstruction cannot be a basis for anticipation is not a valid argument since a prior art reference that anticipates the claimed elements does not require reconstruction since the elements are already in the reference.

The argument that none of the references provide for controlled amplitude and frequency distribution or for combined signal delivery and treatment is not persuasive since claim 1 does not include this claim limitation and since none of the other claims contain a limitation directed to controlled amplitude “and” frequency. In addition, the controls inherently provide for controlled amplitude and/or frequency since the stimulation pulses inherently have those pulse characteristics.

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The argument that no reference describes energy distribution over the wound area is not persuasive since claim 1 does not contain this limitation, since the wound area is not specified, and since the prior art meets the intended use limitations presented in the apparatus claims since it is used for therapy and/or applies a signal that is substantially equal to the applicants signal.

The argument that no reference covers multiple field treatment of a single wound, nor provides for flexible amplitude, frequency, and current distribution during a single wound treatment is not persuasive since claim 1 does not contain any of those limitations and since the prior art meets the "claimed" limitations.

The different arguments directed to the dependent/independent claimed elements not being located in the prior art references are not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

Arguments directed to the 102 rejection in view of Russek.

The argument that the claimed elements are not in the prior art reference is not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

The argument that Russek does not suggest healing is not persuasive since Russek discloses in column 1, line 10, the use of his device to treat pain and is capable of meeting the intended use limitations of the claims since he provides a signal that causes nerve stimulation.

The argument that Russek does not have self-contained controls within each cell is not persuasive since claim 1 does not claim this limitation.

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The argument that none of the references provide for controlled amplitude and frequency distribution or for combined signal delivery and treatment is not persuasive since claim 1 does not include this claim limitation and since none of the other claims contain a limitation directed to controlled amplitude “and” frequency. In addition, the controls inherently provide for controlled amplitude and/or frequency since the stimulation pulses inherently have those pulse characteristics.

The argument that no reference describes energy distribution over the wound area is not persuasive since claim 1 does not contain this limitation, since the wound area is not specified, and since the prior art meets the intended use limitations presented in the apparatus claims since it is used for therapy and/or applies a signal that is substantially equal to the applicants signal.

The argument that no reference covers multiple field treatment of a single wound, nor provides for flexible amplitude, frequency, and current distribution during a single wound treatment is not persuasive since claim 1 does not contain any of those limitations and since the prior art meets the “claimed” limitations.

The different arguments directed to the dependent/independent claimed elements not being located in the prior art references are not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

Arguments directed to the 103 rejections in view of Ostrow.

The argument that the claimed elements are not in the prior art reference is not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

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The argument that Ostrow does not suggest healing is not persuasive since Ostrow discloses in the abstract and column 1, line 3, and column 2, lines 1, 2, 10 and 11, the use of his device for therapeutic treatment, atrophy, bone healing, and treatment of injuries to soft and hard tissue.

The argument that Ostrow does not show controls connect to the cells separately controlling application of power is not persuasive since Ostrow shows in figure 11 controls 48 and 50 controlling power and signals separately to each cell.

The argument that the Examiner is modifying Ostrow using the present invention as a guide merely to negate the claimed features and that such hindsight reconstruction cannot be a basis for obviousness is not persuasive since it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The argument that none of the references provide for controlled amplitude and frequency distribution or for combined signal delivery and treatment is not persuasive since the claims for this rejection do not include those claim limitations and since none of the other claims contain a limitation directed to controlled amplitude “and” frequency. In addition, the controls inherently provide for controlled amplitude and/or frequency since the stimulation pulses inherently have those pulse characteristics.

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The argument that no reference describes energy distribution over the wound area is not persuasive since the claims do not contain this limitation, since the wound area is not specified, and since the prior art meets the intended use limitations presented in the apparatus claims since it is used for therapy and/or applies a signal that is substantially equal to the applicants signal.

The argument that no reference covers multiple field treatment of a single wound, nor provides for flexible amplitude, frequency, and current distribution during a single wound treatment is not persuasive since the claims do not contain any of those limitations and since the prior art meets the “claimed” limitations.

The argument on page 57 that Ostrow does not suggest a body contacting base with plural cells is not persuasive since figure 1 shows a body contacting base containing cells.

Arguments directed to the 103 rejections of Ostrow in view of McLeod.

The argument that McLeod does not have sensors that sense parameters indicative of the wounds to be treated is not persuasive since claim 40 only states the system further comprises sensors and does not contain any limitation directed to sensing parameters indicative of the wounds to be treated. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In addition, McLeod shows the use of sensor 146 in a cell.

The argument that McLeod does not have a base for placing on the body and have plural cells is not persuasive since Ostrow provides those elements.

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The argument that Ostrow does not suggest healing is not persuasive since Ostrow discloses in the abstract and column 1, line 3, and column 2, lines 1, 2, 10 and 11, the use of his device for therapeutic treatment, atrophy, bone healing, and treatment of injuries to soft and hard tissue. In addition, McLeod discloses the use of his system for growing tissue (abstract) and for therapy (column 1, line 15).

The argument that none of the references provide for controlled amplitude and frequency distribution or for combined signal delivery and treatment is not persuasive since the claims do not include this claim limitation and since none of the other claims contain a limitation directed to controlled amplitude “and” frequency.

The argument that no reference describes energy distribution over the wound area is not persuasive since claim 1 does not contain this limitation, since the wound area is not specified, and since the prior art meet the intended use limitations presented in the apparatus claims since they are used for therapy and/or apply a signal that is substantially equal to the applicants signal.

The argument that no reference covers multiple field treatment of a single wound, nor provides for flexible amplitude, frequency, and current distribution during a single wound treatment is not persuasive since claim 1 does not contain any of those limitations and since the prior art meets the “claimed” limitations.

The different arguments directed to the dependent/independent claimed elements not being located in the prior art references are not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

Arguments directed to the 103 rejections of Ostrow in view of Russek.

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The argument that the claimed elements are not in the prior art reference is not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

The argument that Ostrow and/or Russek do not suggest healing is not persuasive since Ostrow discloses in the abstract and column 1, line 3, and column 2, lines 1, 2, 10 and 11, the use of his device for therapeutic treatment, atrophy, bone healing, and treatment of injuries to soft and hard tissue and since Russek states he uses his device to relieve pain (column 1, line 10) and provides a signal to stimulate the nerve.

The argument that Ostrow uses electromagnets and Russek teaches electrodes is not persuasive since Ostrow also teaches electrodes, 64, 65, for electrical stimulation.

The argument that none of the references provide for controlled amplitude and frequency distribution or for combined signal delivery and treatment is not persuasive since claim 1 does not include this claim limitation and since none of the other claims contain a limitation directed to controlled amplitude “and” frequency.

The argument that no reference describes energy distribution over the wound area is not persuasive since claim 1 does not contain this limitation, since the wound area is not specified, and since the prior art meet the intended use limitations presented in the apparatus claims since they are used for therapy and/or apply a signal that is substantially equal to the applicants signal.

The argument that no reference covers multiple field treatment of a single wound, nor provides for flexible amplitude, frequency, and current distribution during a single wound treatment is not persuasive since claim 1 does not contain any of those limitations and since the prior art meets the “claimed” limitations.

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The different arguments directed to the dependent/independent claimed elements not being located in the prior art references are not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

Arguments directed to the 103 rejections of Ostrow in view of Russek and further in view of McLeod.

The argument that the claimed elements are not in the prior art reference is not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

The argument that Ostrow, Russek, or McLeod do not suggest healing is not persuasive since Ostrow discloses in the abstract and column 1, line 3, and column 2, lines 1, 2, 10 and 11, the use of his device for therapeutic treatment, atrophy, bone healing, and treatment of injuries to soft and hard tissue, since Russek is used to relieve pain, and since McLeod is used for therapeutic purposes (column 1, line 15) to grow tissue (abstract).

The argument that McLeod does not have sensors that sense parameters indicative of the wounds to be treated is not persuasive since the claim 40 only states the system further comprising sensors and does not contain any limitation directed to sensing parameters indicative of the wounds to be treated. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The argument that McLeod does not have a base for placing on the body and have plural cells is not persuasive since Ostrow provides those elements.

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The argument that none of the references provide for controlled amplitude and frequency distribution or for combined signal delivery and treatment is not persuasive since claim 1 does not include this claim limitation and since none of the other claims contain a limitation directed to controlled amplitude “and” frequency.

The argument that no reference describes energy distribution over the wound area is not persuasive since the claims do not contain this limitation, since the wound area is not specified, and since the prior art meet the intended use limitations presented in the apparatus claims since they are used for therapy and/or apply a signal that is substantially equal to the applicants signal.


The argument that no reference covers multiple field treatment of a single wound, nor provides for flexible amplitude, frequency, and current distribution during a single wound treatment is not persuasive since claim 1 does not contain any of those limitations and since the prior art meets the “claimed” limitations.

The different arguments directed to the dependent/independent claimed elements not being located in the prior art references are not persuasive since the examiner has shown above in section (10) where the claimed elements are located in the prior art.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


George R Evanisko
Primary Examiner
Art Unit 3762

2/7/5

GRE

February 7, 2005

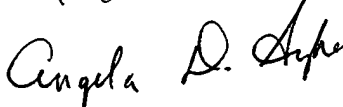
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